

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Forestry and Wildlife
Honolulu, Hawaii 96813

November 17, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:

Island of Kauai

Accept Dedication of a Perpetual Trail Easement by Landowner of an Existing Coastline Trail and to Include this Trail Easement as part of the Na Ala Hele Trail and Access Program and Relinquishment of Right to Re-establish Trail along or near the High Water Mark: Moloa`a, Kauai, Hawaii, Tax Map Key, (4) 4-9-11:1.

APPLICANTS:

Moloa`a Bay Ranch, LLC, a foreign (Colorado) limited liability company, whose business and mailing address is 132 West Main St., Aspen, Colorado 81611 (Landowner); and

Divisions of Land and Forestry and Wildlife – Na Ala Hele (NAH) Trail and Access Program (DLNR).

LEGAL REFERENCE:

Hawaii Revised Statutes, §171-30, §198D - as amended.
Hawaii Administrative Rules §13-130-13

LOCATION:

Portion of trail situated at Moloa`a, Kauai, Hawaii identified by Tax Map Key: (4) 4-9-11:1, as shown on the attached map labeled Exhibit A.

AREA:

The trail is five (5) feet either side of a centerline, identified by the State NAH, which was then marked and surveyed. The total area is 20,235 square feet, more or less, as determined by survey and verified by the Department of Accounting and General Service, Survey Division.

ZONING:

State Land Use District: Conservation
 Kauai County CZO: Open

LAND STATUS: Private

CURRENT USE STATUS: Vacant

CONSIDERATION: Gratis dedication to State

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Proposed acceptance of an existing coastline trail by means of a dedication granting a perpetual easement on private land does not propose use of State funds or existing public lands or of any new use within the conservation district. No Environmental Assessment is required.

DCCA VERIFICATION:

Place of business registration confirmed: YES
 Registered business name confirmed: YES
 Applicant in good standing confirmed: YES

APPLICANT REQUIREMENTS:

Landowner has provided the required survey maps and descriptions according to State DAGS standards.

REMARKS:

The State, through the NAH Program (NAH), seeks to re-establish authorized public access along a historic coastline trail that the Commissioner of Public Lands (CPL) under the Territory of Hawaii, relinquished in 1932 as part of an overall settlement of the Moloa`a Hui lands. In the settlement, the Territory reserved a general and unspecified future right to re-establish a coastal trail in the area, but did not clearly identify the location of the trail (along or near the high water mark), or define a process to re-establish such a trail. The Board is the successor in interest of the CPL.

The current trail is within an area that is the subject of both a CDUP and a Kauai County SMA permit application. During the processing of these applications, members of the public expressed very strident concerns relating to clarifying pedestrian access along the trail. Consequently, the public has demonstrated continued interest in re-establishing access along the coastline.

Lateral shoreline access in this area is further complicated by the fact that the Territory did not relinquish its interest in this trail in adjacent parcel (TMK: 4-9-11-23), and this issue must be resolved with the adjacent landowner. Clarification of and establishing the location of public access in the subject parcel is critical as NAH attempts to determine the location of the historic trail in the adjacent parcel.

To resolve this historical trail matter and clarify public access, the landowner proposes to dedicate a trail roughly along the historic alignment of the trail which is near and parallel to the coastline along the northern coast of Moloa'a Bay, Kauai. Kauai County has not expressed a desire to accept the easement dedication, and the Department of the Attorney General expressed a preference for dedication to NAH, instead of a generic dedication to the State of Hawaii. This is partially due to NAH's statutory liability protection specified in HRS §198D-7.6, which allows for the imposition of liability against the State only upon a showing of gross negligence.

The dedication will be perpetual easement gratis to the State. The State, through NAH, has identified and located the most likely location of the historic trail and marked it. The landowner funded and executed a metes and bounds survey. (See attached)

To settle any questions of residual interests and to clarify title, the State will quitclaim or grant to the landowner any other remaining interests, if any, the State might have to re-establish the trail as set forth in the Moloa'a Hui settlement, referred to above.

The State may accept dedications of real property pursuant to Haw. Rev. Stat. § 171-30:

§ 171-30. Acquisition of real property; general.

(a) The board of land and natural resources shall have the exclusive responsibility, except as provided herein, of acquiring, including by way of dedications:

(1) All real property or any interest therein and the improvements thereon, if any, required by the State for public purposes, . . .

The State will receive the dedicated trail easement gratis, therefore no appraisal is required^[v1].

Applicant has agreed to work with the DLNR/NAH program in managing the trail via a Memorandum of Agreement.

Given that the trail easement is completely within private property, there are no other competing State claims.

Staff recommends that the dedication be accepted and that the State quitclaims any other or remaining claims it might have to the property as a way of perfecting title.

The Board may designate a trail or access as under the regulatory authority of NAH:

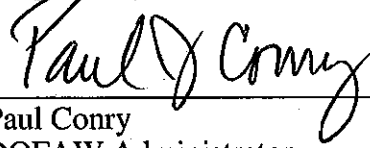
§13-130-13 Program trail and access designation. The board shall periodically designate the inclusion of a trail or access selected from among the inventoried trails and accesses upon consultation with the division, the NAH staff, and the respective island advisory council from which a particular trail or access is located .

RECOMMENDATION:

That the Board:

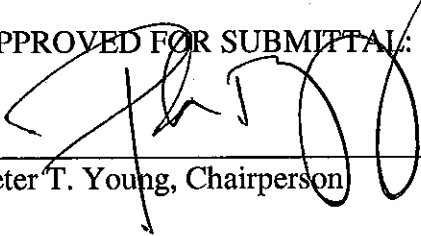
1. Finds that:
 - a. The public has expressed a desire to move laterally along the coastline between Moloa`a Bay and the coastline north of the Bay;
 - b. Historically, the government had owned, but relinquished interest in a coastline trail similar to the easement identified here;
 - c. Re-establishing this trail for public use will promote and secure in-perpetuity public access along the coastline at Moloa`a Bay; and
 - d. Accepting the landowner's dedication of a perpetual easement will best facilitate management of trail by the State, and in turn, to perfect title, the State will quitclaim or grant to the landowner whatever remaining or inchoate interests the State still has or may have.
2. Authorize the acceptance of the dedicated perpetual easement.
The Applicant shall grant and file a perpetual easement for public pedestrian access over the re-established and re-aligned trail to the State in an appropriate document subject to review and approval by the Department of the Attorney General.
3. Approve the transfer of any underlying title to the subject portion of the trail from the State of Hawaii to Moloa`a Bay Ranch, LLC, or its designated entity and authorize the Chairperson to execute the transfer by way of land patent grant, deed, quitclaim deed or other appropriate document subject to review and approval by the Department of the Attorney General, and
4. Designate the trail under the regulatory authority of NAH via §13-130-13 and authorize the Chairperson to enter into a Memorandum of Agreement with Moloa`a Bay Ranch, LLC, for the management of the trail for public use - under such terms and conditions acceptable to NAH and subject to review and approval by the Department of the Attorney General;
5. Authorize the Chairperson to execute other terms and conditions as may be necessary to best serve the interests of the State.

Respectfully Submitted,



Paul Conry
DOFAW Administrator

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson